



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 1, 1996

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-1808

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101126.


The City of Dallas (the "city") received a request for information relating to the city's contracting practices and the "Availability and Disparity Study" (the "study") prepared for the city by a consultant. You state that the city intends to make most of the requested information available to the requestor. However, you believe that the "final addendum" to the study, a copy of which you have submitted to this office for review, is excepted from disclosure under section 552.111 of the Government Code.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies to memoranda prepared for a governmental body by a consultant. Open Records Decision Nos. 462 (1987) at 14, 298 (1981) at 2. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not, however, except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5. The preliminary draft of a policymaking document that has been released or is intended for release in a final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990) at 2.

You have highlighted several pages of the "final addendum" to the study. You seek to withhold these pages from disclosure under section 552.111. A consulting firm, D.J. Miller and Associates, prepared the study for the city for the purpose of advising the city as to how many minority and women-owned businesses are available in the city and the extent to which the city has utilized these businesses in the recent past. You state that the "final addendum" to the study is still in draft form and that the city intends to release the "final addendum" to the public once it is in its final form. Under these circumstances, we conclude that the city may withhold the highlighted pages of the "final addendum" under section 552.111 of the Government Code. Of course, the city may choose to release the "final addendum" in its draft form. *See Gov't Code § 552.007.*

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101126

Enclosures: Submitted documents

cc: Mr. Raleigh Roussell
Executive Vice President
Associated General Contractors of America
11111 Stemmons Freeway
Dallas, Texas 75229
(w/o enclosures)

- (c) 1990 theater revenue bonds;
- (d) 1991 general obligation refund bonds;
- (e) 1992 dormitory revenue bonds;
- (f) 1994 general obligation refund bonds;
- (g) 1994 public property bonds;
- (h) 1994 theater revenue bonds;
- (i) 1994 dormitory bonds.

You have determined that the requestor, an attorney representing Dr. Wanda Schindley, is entitled to a copy of Dr. Schindley's personnel file. You have also determined that the college does not possess any information responsive to categories 3 or 4 of the request. Thus, the only information at issue here is the information that is responsive to category 2 of the request. You have submitted that information to this office for review because you believe section 552.103 of the Government Code excepts the information from disclosure.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You have demonstrated that litigation involving the requestor's client is pending against the college. You have also shown how the information at issue here is related to the litigation. Accordingly, the college may withhold the information from disclosure under section 552.103(a) of the Government Code.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented

¹We note that if the opposing parties in the pending litigation have seen or had access to any of the information at issue, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Of course, the district has discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.